

**FEDERAL TRADE COMMISSION
OFFICE OF THE SECRETARY
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**COMMENTS OF ACA INTERNATIONAL IN RESPONSE TO
REQUEST FOR COMMENTS ON ACCURACY PILOT STUDY:
PAPERWORK COMMENT (FTC FILE NO. P044804)**

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INTRODUCTION

The following comments are submitted on behalf of ACA International (“ACA”) in response to the Federal Trade Commission’s notice and request for comments on the proposed follow-up pilot study concerning the accuracy and completeness of consumer report information pursuant to section 319 of the Fair and Accurate Credit Transactions Act of 2003 (“FACTA”). *See* 71 Fed. Reg. 61776 (Oct. 19, 2006).

I. Statement on ACA

ACA International is an international trade organization of credit and collection companies that provide a wide variety of accounts receivable management services. Headquartered in Minneapolis, Minnesota, ACA represents approximately 6,500 company members ranging from credit grantors, third-party collection agencies, attorneys, and vendor affiliates. ACA has numerous divisions or sections accommodating the specific compliance and regulatory issues of its members’ business practices.¹

The company-members of ACA are subject to applicable federal and state laws and regulations regarding debt collection, as well as ethical standards and guidelines established by ACA. Specifically, the collection activity of ACA members is regulated primarily by the Federal Trade Commission under the Federal Trade Commission Act, the Fair Debt Collection Practices Act (“FDCPA”), the FCRA and FACTA, and the Gramm-Leach-Bliley Act, in

¹ *See* www.acainternational.org. These divisions or sections of ACA include Creditors International,

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addition to numerous other federal and state laws. Indeed, the accounts receivable management industry is unique if only because it is one of the few industries in which Congress enacted a specific statute governing all manner of communications with consumers when recovering payments.

ACA members range in size from small businesses with a few employees to large, publicly held corporations. Together, ACA members employ in excess of 100,000 workers. These members include the very smallest of businesses that operate within a limited geographic range of a single town, city or state, and the largest of national corporations doing business in every state. The majority of ACA members, however, are small businesses. Approximately 2,000 of the company members maintain fewer than 10 employees, and more than 2,500 of the members employ fewer than 20 persons.

Whether creditors, asset buyers or sellers, or third-party debt collectors, ACA members regularly furnish and use consumer information to effectuate collections by and on behalf of their credit-grantor clients. In this regard, ACA members play a role in the process of identifying discrepancies or irregularities in consumers' credit files. This fact is reflected in FACTA, which requires third party collectors to take affirmative steps to investigate consumers' accounts upon notice of a dispute. When a collector receives a notice of a dispute directly from a consumer, the collector must take four steps: (1) conduct a reasonable investigation with respect to the disputed information; (2) review all the information provided

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by the consumer with the notice of dispute; (3) complete the investigation and respond to the consumer within thirty days of receipt of the dispute; and (4) if the investigation determines that the disputed item of information is inaccurate, the data furnisher must correct the inaccuracy with each CRA to which the furnisher provided the inaccurate information. Other FACTA components require collectors to have in place reasonable procedures to respond to identity theft notifications received from consumer reporting agencies in order to prevent more false information from being reported.

II. Summary of the Initial Pilot Study and Follow-Up Study

FACTA requires the FTC to study the accuracy and completeness of information in consumers' credit reports and to consider methods for improving the accuracy and completeness of such information. As a precursor to a nationwide study, the FTC conducted a pilot study between October 2005 until June 2006 to evaluate the feasibility and methodology of a nationwide survey on the accuracy and completeness of consumer reports. Following a notice and comment period on the study design elements, ACA filed a comment with the Commission. *See* <http://www.ftc.gov/os/comments/FACTA-Accuracy%20Study-Part%20II/050601aca.pdf> (accessed Dec. 9, 2006).

The Commission issued a second interim report to Congress on December 5, 2006, concerning the results of the initial pilot study. The report identifies two issues which arose during the initial study. First, the majority of consumers who alleged disputes on their

Program, and Internet and Check Services Program.

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consumer reports did not follow through with filing a formal dispute with the consumer reporting agencies. Second, the study appears to have been biased toward consumers with high credit scores. Consequently, the Commission has proposed a follow-up study to address these issues, specifically, by adjusting the design elements of the study to encourage the filing of disputes and to recruit more representative study participants (that is, with a wider range of credit scores).

III. Brief Comments of ACA

ACA reiterates its support of the FTC's pilot study of the accuracy and completeness of consumer reports using methodologies that translate to a subsequent, national survey. However, ACA believes that some design elements may threaten the utility of a national study.

For example, the follow-up pilot study does not define the most basic of terms at the core of the FTC's charge under section 319 of the FACTA to undertake a study of the accuracy and completeness of information in consumer reports. The terms "accuracy" and "completeness" nowhere are defined as used in the study. The design elements of the study do not address these basic definitional issues.

Further, as data furnishers, ACA members are concerned that the pilot study does not define the type of conduct will be deemed a "dispute" in the context of the study. The concept of a "dispute" is integral to the study as it is a term used in four of the six possible outcomes of the items reviewed on the consumer reports. *See, e.g.*, 70 Fed. Reg. at 24585. As the

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Commission is aware, a “dispute” is a loaded term for the accounts receivable management industry and data furnishers under the FACTA’s “know or should know” standard. The term is not defined by FACTA, even though it is used throughout the statute to trigger duties of data furnishers. The courts that have looked what constitutes a consumer’s “dispute” have not added clarity. In *Brady v. The Credit Recovery Co., Inc.*, 160 F.3d 64 (1st cir. 1998), the court concluded that a dispute requires no notification by the consumer, written or oral, but instead depends solely on the furnisher’s knowledge of the debt irrespective of what the consumer has communicated. This is an ethereal standard. Moreover, a clear understanding of what constitutes a “dispute” in the study is especially significant because of the stated intention of the FTC to “evaluate the number and potential seriousness of the unresolved disagreements [disputes] in an effort to determine whether there is an appropriate methodology to assess in a nationwide survey.” *See* 70 Fed. Reg. at 24586.

ACA respectfully submits that the follow-on study should address the issue of what constitutes a “dispute” as a logical extension of its effort to use the additional study to encourage consumers to file disputes with consumer reporting agencies. As the Commission recognizes in its December 2006 report to Congress, there is widespread disagreement about the efficacy of the dispute process to resolve alleged inaccuracies. Inasmuch as a study of the number of consumers who allege errors and the ultimate disposition of their disputes would provide some information about the rate of errors on consumer reports, it does not address the issue of whether the errors are “disputes” within the meaning of the statute – thereby

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triggering action by data furnishers and consumer reporting agencies. Thus, it may be that consumers who never disputed errors with the consumer reporting agencies (a majority of participants in the study) may have later concluded that the data was accurate or otherwise not disputed.

In addition, ACA believes that categorization of the type of furnisher that is the subject of the dispute might be a useful design element for the follow-up study.

CONCLUSION

ACA appreciates the opportunity to comment on the follow-up pilot study. If you any questions, please contact Rozanne Andersen, ACA International General Counsel and Senior Vice President of Legal and Governmental Affairs, at (952) 928-8000 ext. 132, or Andrew M. Beato at (202) 737-7777.